

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Patrick E. Dullen

v.

Civil No. 05-cv-139-PB

Cheshire County, et al.

O R D E R

Defendants move under the "three strikes" rule set out in 28 U.S.C. § 1915(g) to require plaintiff to pay the full filing fee (or be dismissed). The "three strikes" rule applies when a prisoner has had three or more cases dismissed for frivolity or failure to state a claim. Dullen's two prior claims in this court were dismissed for other reasons, one for failure to provide discovery and one for lack of subject matter jurisdiction. Neither provide a "strike". The Northern District of New York dismissed its case for a failure to abide by court orders. Of the two Tennessee cases referenced, one was dismissed for a failure to state a claim (one strike) and the other on the basis of judgment as a matter of law - failure to state a claim (strike two).

In short, there is no basis at this time to invoke 28 U.S.C. § 1915(g) as plaintiff has only two strikes. The motion

(document no. 17) is denied.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: October 25, 2005

cc: Patrick E. Dullen, *pro se*
W. Kirk Abbott, Jr., Esq.
John A. Curran, Esq.